

APPEAL NO. 022902
FILED JANUARY 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 14, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters; and that, due to the late filing of the Application for SIBs (TWCC-52), the respondent (carrier) is relieved of liability for the fifth quarter for the period of October 4 through December 3, 2001, and is relieved of liability for the sixth quarter for the period of January 3 through April 3, 2002. The claimant appealed. No response was received from the carrier.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the fifth and sixth quarters. The hearing officer was not persuaded by the claimant's testimony or documentary evidence that the claimant was actually trying to obtain employment. The hearing officer found that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work during the relevant qualifying periods. In making the good faith determination, the hearing officer could consider the factors listed in Rule 130.102(e), which include, among other things, the number of jobs applied for throughout the qualifying period, applications or resumes which document the job search efforts, amount of time spent in attempting to find work, and any job search plan by the injured employee. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the fifth and sixth quarters is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Rule 130.105 pertains to the failure to timely file the TWCC-52. Although there is conflicting evidence regarding when the claimant filed his TWCC-52s with the carrier, we cannot conclude that the hearing officer's findings as to the dates the TWCC-52s were filed are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**THE CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge